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To be decided by the Judge & his decision cannot be reviewed in this Court. See State vs George 7, Dec 321 & State vs Andrew at this term where the subject is fully explained. The remarks made in that case are applicable to this, not excepting what is said in reference to the propriety of cases made up for this Court. In speaking of the connexion necessary to be proved between the prisoner & Ann Shelton as preliminary to the admissibility of her acts & declarations in furtherance of the common purpose as evidenced against him, I have used the word "agreement" to aid & assist each other to effect the death, in preference to the word "conspiracy" for although they have the same meaning, yet the latter has a tendency to lead to a confusion of ideas - for if parties are indicted for a conspiracy to murder or do some other unlawful act - in that case the issue joined on the plea of not guilty, is the fact of the conspiracy. The evidence to prove it must, of course, be given to the jury & passed upon by them - otherwise, when the indictment is for the murder or other act, & the fact of an agreement to aid & assist is only preliminary to the admissibility of the acts & declarations of one against the other.

There is error. This will be certified. This cause came on to be argued upon the transcript of the record from the Superior Court of Law of Dedwell County. Upon consideration whereof this Court is of opinion that there is error in the proceedings of the said Superior Court. Therefore, it is ordered that